IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.197/1993
(Govind Ram Vs. State)

Date of order : 19.7.2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vikram Choudhary, for the appellant.
Mr. L.R. Upadhyay, Public Prosecutor.

By way of filing the present revision petition, the petitioner has challenged the judgment dated 17.11.1992 passed by Additional Chief Judicial Magistrate, Deedwana in Criminal Case No.116/1992 (245/1989) whereby the learned trial court convicted the petitioner for offence under Section 25 (1-B) (h) of the Arms Act and sentenced him for one year RI along with fine of Rs.200/- and in default of payment of fine to further undergo one month RI so also the judgment dated 9.7.1993 passed by Additional District & Sessions Judge, Nagaur camp at Deedwana in Criminal Appeal No.62/1992 whereby the learned appellate court while maintaining the conviction awarded to the

petitioner reduced the sentence from one year RI to three months RI and maintained the sentence of fine.

According to the facts of the case, one rifle was recovered from the petitioner at the time of making an enquiry by Police on 18.8.1989 at his residence. As per the prosecution case, the said rifle was produced by the petitioner before PW-6 Bhanwar Singh, SHO and the same was taken into possession through Exhibit P-1. License bearing No.49/1963 issued in the name of late Jeevan Ram – father of the petitioner was also produced by the petitioner, which was renewed upto 7.10.1969. The said License was taken into possession as Exhibit P-2 by the Investigating Officer and thereafter, the petitioner was arrested. After investigation, challan was filed against the petitioner for committing offence under Section 25 (1-B) (h) of the Arms Act. Accordingly, charges were framed against the petitioner for offence under Section 25 (1-B) (h) of the Arms Act. In all eight prosecution witnesses were examined before the trial court and thereafter, statements under Section 313 Cr.P.C. were recorded and only one witness namely Anchi – mother of the petitioner was examined by the trial court as DW-1. After hearing the arguments and perusing the record of the case, the trial court recorded the finding of guilt against the petitioner for offence under Section 25 (1-B) (h) of the Arms Act and convicted and

sentenced him as above vide judgment dated 17.11.1992. An appeal was preferred by the petitioner against the judgment of the learned trial court and the said appeal was finally decided by Additional District & Sessions Judge, Nagaur Camp at Deedwana. The appellate court while maintaining the conviction reduced the sentence awarded to the petitioner from one year RI to three months RI. The appellate court further maintained the sentence of fine imposed by the trial court. The petitioner has challenged both the orders passed by trial court as well as appellate court.

It is contended by the learned counsel for the petitioner that both the judgments passed by courts below are erroneous because prosecution has failed to prove its case beyond reasonable doubt. Admittedly, as per the prosecution case, the recovered rifle was belonging to late Jeevan Ram – father of the petitioner and there was valid license in his favour. As per the prosecution case, on 18.8.1989 an enquiry with regard to licensed rifle was made from house of late Jeevan Ram by the SHO and upon that enquiry, it was found by the Investigating Officer that said Jeevan Ram already died before 15 years back and as per the prosecution case, the said rifle was produced by the petitioner in presence of two independent witnesses namely PW-1 Jugal Kishore and PW-7 Mohan Ram and both these witnesses turned hostile before the

learned trial court and did not corroborate the prosecution case. It is also contended by the learned counsel for the petitioner that in this case, the said weapon was taken into possession by SHO Bhanwar Singh – PW-6 and he himself prepared Exhibit P-1 and Exhibit P-2 and rifle and license was taken into possession by him. Therefore, he was complainant in the case and he himself conducted the investigation, therefore, whole of the case cannot be treated to be based on proper investigation. Likewise, it is contended by the learned counsel for the petitioner that except witnesses of police, no one has corroborated the prosecution story. It is also contended that as per the facts of the case licensee of the rifle late Jeevan Ram left four sons and his wife behind him and all were residing in one house, therefore, it cannot be said that the prosecution has proved its case beyond reasonable doubt for the purpose of proving exclusive possession of said recovered rifle from the petitioner and the petitioner who is illetrate person cannot be held responsible. Further, it was the duty of the prosecution to prove its case that said rifle was recovered from exclusive and rightful possession of the petitioner. Admittedly, all the legal heirs of late Jeevan Ram were residing in the same house from where the rifle was recovered by the Police and as per the statements recorded under Section 313 Cr.P.C., it was categorically stated by the petitioner that he was not present at the time of alleged recovery. He was

informed by his mother that police party came and they took the said rifle and they also called him at Police Station. It is also contended by the learned counsel for the petitioner that the learned trial court has failed to consider this aspect of the matter that the said rifle was not recovered from the exclusive possession of the petitioner and none of the independent witnesses have corroborated the prosecution story. Similarly, it is the case of the prosecution that the said rifle was belonging to father of the petitioner and there was valid license in his name, which was renewed upto 7.10.1969 and as per the prosecution case father of the petitioner died before 15 years back from the date of alleged recovery of rifle. Meaning thereby upto 1974, the said rifle was in possession of late Jeevan Ram – father of the petitioner. Thus, from the year 1969 to 1974 also the license was not renewed. Lastly, it is contended by the learned counsel for the petitioner that both the courts below have committed error while accepting the prosecution case with regard to recovery of said rifle from exclusive and rightful possession of the petitioner. Therefore, both the judgments passed by trial court as well as learned appellate court are totally erroneous. It is also contended by the learned counsel for the petitioner that as per the statement of Anchi DW-1 – wife of late Jeevan Ram and mother of the petitioner, that four sons of late Jeevan Ram are alive and all of them are living

together. It is also stated by her in her statement that said rifle was given by her to the Police. Meaning thereby, learned trial court has failed to rely upon the statement of Anchi – DW-1, who has specifically stated before the court that the said rifle was handed over by her to the Police. Therefore, the judgment rendered by the learned trial court is totally contrary to the basic principles of law with regard to exclusive possession of recovered rifle from the petitioner. Admittedly, all the legal heirs and wife of late Jeevan Ram were residing in one house, then, how only the petitioner can be held responsible. Therefore, the judgment passed by learned trial court deserves to be quashed and set aside. However, with regard to the judgment rendered by learned appellate court, it is contended by the learned counsel for the petitioner that in para – 11 of the said judgment, learned appellate court has given finding that there is no dispute that the petitioner is eldest son of late Jeevan Ram and being the eldest son, he is responsible and guilty for committing offence under Section 25 (1-B) (h) of the Arms Act. Such finding is totally erroneous. It was the duty of the appellate court to see as to whether the prosecution has proved its case beyond reasonable doubt with regard to exclusive possession of the petitioner over the said recovered rifle. As per the evidence, the prosecution has failed to establish that only the petitioner was in exclusive possession of the

said recovered rifle. It is also obvious that it is no where established by the prosecution evidence that only the petitioner was responsible for depositing the said rifle after the death of Jeevan Ram and in absence of such an evidence, both the courts below have committed error while convicting the petitioner for offence under Section 25 (1-B) (h) of the Arms Act. Learned counsel for the petitioner has also contended that the petitioner was to be given benefits of probation but it was wrongly denied to him without assigning any reasons by the learned trial court. At the time of committing alleged offence, the petitioner was 57 years of age and the occurrence took place in the year 1989 and we are running in 2006, meaning thereby, near-about 17 years have passed and the petitioner is a poor villager and there is no allegation against the petitioner that he has misused the said rifle after death of his father till the recovery on 18.8.1989.

Learned counsel for the petitioner has invited the attention of this Court towards the judgments rendered by this Court in case of Sahi Ram Vs. State of Rajasthan, reported in 1993 Cr.L.R. (Raj.) 281 and in case of Gyan Chand Vs. State of Rajasthan, reported in Cr.L.R. (Raj.) 283 and contended that in the aforesaid judgments, this Court has held that the Police Officer filing FIR cannot conduct investigation. It is contended that in this

case the enquiry was made by SHO, who himself registered the FIR and conducted the investigation. Therefore, both the judgments passed by trial court as well as appellate court deserve to be quashed and set aside.

Par contra, learned Public Prosecutor vehemently opposed the prayer made by the learned counsel for the petitioner and contended that the prosecution has proved its case beyond reasonable doubt and learned trial court has rightly recorded the finding of guilt against the petitioner for offence under Section 25 (1-B) (h) of the Arms Act. It is also contended by learned Public Prosecutor that both the courts below after perusing the record and taking into consideration the entire prosecution evidence has rightly come to the conclusion that the petitioner has committed offence under Section 25 (1-B) (h) of the Arms Act. Therefore, no case for interference in the findings given by learned trial court as well as appellate court is made out and the conviction is based upon the cogent evidence produced by the prosecution. In these circumstances, the revision petition deserves to be dismissed.

I have heard learned counsel for the petitioner as well as learned Public Prosecutor and carefully perused the entire record of the case. While exercising revisional jurisdiction, illegality

and propriety of the order is required to be seen. In this case finding of fact of both the courts below are concurrent but the main question which requires consideration is whether the prosecution has proved that the alleged weapon was recovered from the exclusive possession of the petitioner and if yes, then what is the evidence on record and whether upon that evidence it can be said that the prosecution has proved its case for the purpose of proving the recovery from the exclusive possession of the petitioner. It is true that if any weapon is lying in the premises with knowledge and license of that weapon is not renewed, then, as per the provisions of Section 25 (1-B) (h) of the Arms Act, the said weapon is required to to deposited in the nearest Police Station. In this case, the rifle which is said to be recovered from the premises was belonging to one late Jeevan Ram – father of the petitioner and a license was issued in his favour in the year 1961, which was renewed upto 7.10.1969. According to the prosecution evidence in the year 1989 when the enquiry was made by SHO and the said rifle was taken into possession by Police, the licensee of said rifle Jeevan Ram already died before 15 years. As per the prosecution case, the license was not renewed after 1969 and the said rifle remained in the custody of legal heirs of late Jeevan Ram and the same was not deposited in the Police Station. It is also obvious from the facts of the case that even late Jeevan Ram remained in

possession of said rifle without renewal of license after 1969. It was to be established by trial court as to who was responsible for non-depositing of said rifle in the nearest police station as per the provisions of Section 25 (1-B) (h) of the Arms Act. As per the evidence of the case, two motbirs namely PW-1 Jugal Kishore and PW-7 Mohan Ram, who have turned hostile before the court, did not prove the recovery in front of them from the petitioner. It is categorically stated in their statements that signatures were obtained in the Police Station by SHO. It is also clear from the statement of DW-1 – Anchi – wife of late Jeevan Ram and mother of the present petitioner that rifle was handed over by her to Police. Similarly, in the statement recorded under Section 313 Cr.P.C., it is stated by the petitioner himself that rifle was handed over to Police by his mother. Thus, the only evidence, which is said to be against the petitioner is the statement of police personnel namely Ganesh Lal, SHO – PW-8, Guman Singh, Head Constable – PW-2 and Bhanwar Singh, Head Constable, PW-3. They stated before the Court that the said rifle was brought by the petitioner. Admittedly, late Jeevan Ram was having valid license in his favour and the said licensee was not renewed after 1969 and according to the prosecution, the enquiry of the said weapon was made by Police for the first time in the year 1989. Meaning thereby, after expiry of 20 years, the prosecution has chosen to

enquire into the matter. It is primary duty of the authorities of the welfare State, who are issuing licenses of the weapons under the Arms Act to act promptly. If any licensee is not filing any application for renewal of the license, the welfare State cannot permit any such person to have in possession of any weapon without any valid license as required under the provisions of Arms Act. In this case as per the prosecution case, the enquiry was made by SHO in the year 1989 and at the time of enquiry, the said rifle was produced by the petitioner. From the evidence, it is clear that the said rifle was recovered by Police from the house where all the legal heirs of late Jeevan Ram were living together but only the present petitioner being the eldest son of late Jeevan Ram was prosecuted but the witnesses of recovery did not support the prosecution case. Likewise, except the statement of PW-8 - SHO, supported by two police personnel, there is no evidence on record to prove the case that the said weapon was brought by the petitioner. Against this evidence with regard to bringing the said rifle by the petitioner, both the independent witnesses have turned hostile and they did not support the prosecution story. Likewise, as per the statement recorded under Section 313 Cr.P.C., it is categorically stated by the petitioner that the said rifle was not brought by him and as per the statement of DW-1 also, it is obvious that the said rifle was not produced by the

petitioner. The evidence on record admittedly creates suspicion as to whether the petitioner has handed over the rifle to SHO or his mother or any other person. Likewise, there is force in the contention of the learned counsel for the petitioner that SHO upon enquiry said that the said rifle was handed over to him by the petitioner. Meaning thereby, he was complainant in this case and investigation was to be conducted by any other police officer. In my opinion, it is not safe to come to the conclusion that prosecution has proved its case with regard to handing over rifle by the petitioner. So also, there is no evidence on record that as to how only the petitioner being the eldest son of late Jeevan Ram is responsible for not depositing the said rifle in the nearest Police Station in accordance with the provisions of Arms Act. There is no evidence adduced by the prosecution that in whose possession the recovered rifle remained from last 15 years. In absence of any evidence that after the death of Jeevan Ram – original licensee, the rifle was in possession of the petitioner – the eldest son of late Jeevan Ram, it is not justified to hold the petitioner guilty for offence under Section 25 (1-B) (h) of the Arms Act. Thus, both the courts below have committed error while convicting the petitioner for offence under Section 25 (1-B) (h) of Arms Act. Further more, having perused the statement of DW-1 Anchi – wife of late Jeevan Ram and mother of the petitioner, it can be said that

being an illiterate lady under the ignorance of law, she might have not deposited the said rifle in the police station, so also, the petitioner is also illiterate person. Thus, the learned trial court has committed illegality while holding that the prosecution has proved its case beyond reasonable doubt as far as the alleged recovery of rifle from the petitioner is concerned.

In these circumstances, the revision petition succeeds and is allowed. Accordingly, the judgment dated 17.11.1992 passed by Additional Chief Judicial Magistrate, Deedwana in Criminal Case No.116/1992 (245/1989) as well as the judgmenet dated 9.7.1993 passed by Additional District & Sessions Judge, Nagaur Campt at Deedwana in Criminal Appeal No.62/1992 stands set aside. The petitioner is on bail. His bail bonds are discharged.

(GOPAL KRISHAN VYAS), J.

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